



# RULE-MAKING ORDER

## (RCW 34.05.360)

**CR-103** (7/22/01)

**Agency:** Department of Financial Institutions – Securities Division

- ☒ Permanent Rule  
☐ Emergency Rule  
☐ Expedited Rule Making

**(1) Date of adoption:** 4/26/02

**(2) Purpose:** Federal judicial opinions construing Section 10(b) and SEC Rule 10b-5, which is substantially identical to RCW 21.20.010, have found Section 10(b) liability when a person purchases or sells a security on the basis of material nonpublic information concerning the security or issuer. Rule 10b5-1(c) sets forth affirmative defenses under which a person's purchase or sale of securities will not be deemed to have been made on the basis material nonpublic information. There is a concern among securities law practitioners that absent a rule, there may be liability under RCW 21.20.010 for transactions that comply with Rule 10b5-1(c). The proposed rule would clarify that a purchase or sale that complies with Rule 10b5-1(c) would also be protected from liability under RCW 21.20.010.

**(3) Citation of existing rules affected by this order:**

Repealed:  
Amended:  
Suspended:

**(4) Statutory authority for adoption:** RCW 21.20.450

Other Authority:

### PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 02-07-027 on 03/12/02 (date).

Describe any changes other than editing from proposed to adopted version: None

### EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**(5.3) Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?:**

- ☒ Yes ☐ No If Yes, explain: No rule may be made unless the Director of the Department of Financial Institutions finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of RCW 21.20. The Director hereby makes such a finding with respect to this proposal.

**(6) Effective date of rule:**

#### Permanent Rules

- ☒ 31 days after filing  
☐ Other (specify) \_\_\_\_\_\*

\*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

#### Emergency Rules

- ☐ Immediately  
☐ Later (specify) \_\_\_\_\_

CODE REVISER USE ONLY

Filed 04/30/02—10:19 AM

WSR 02-10-103

Name (Type or Print)

**Mark Thomson**

Signature

/s/

Title

**Acting Director**

Date

04/29/02

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>1</u>	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	<u>1</u>	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____